

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

COLLEEN AND STEVE LYMAN, :  
Plaintiffs, :  
v. : Case No. 2:09-cv-262  
PFIZER, INC., WYETH, INC., :  
SCHWARZ PHARMA, INC., :  
TEVA PHARMACEUTICALS USA, INC., :  
PLIVA USA, INC., :  
ACTAVIS-ELIZABETH, L.L.C. :  
Individually and as a subsidiary :  
Of ACTAVISD, INC. and as successor :  
To PUREPAC PHARMACEUTICAL, INC., :  
Defendants. :

## ORDER

Defendants Actavis, Inc. and Actavis-Elizabeth, L.L.C. filed a motion to stay all proceedings in this litigation until the United States Supreme Court has ruled on the generic preemption issues raised in *Demahy v. Actavis, Inc.*, 593 F.3d 428 (5<sup>th</sup> Cir. 2010), certiorari granted No. 09-1501 and *Mensing v. Wyeth, Inc.*, 588 F.3d 603 (8<sup>th</sup> Cir. 2009), certiorari granted Nos. 09-993 and 09-1039. Arguments are to be heard on March 30, 2011, with rulings anticipated prior to the expiration of the term in June, 2011. Defendants rely in part upon this Court's Order in *Kellogg v. Wyeth, et. al.*, Case No. 2:07-cv-00082-wks in which the same issues were raised. In *Kellogg*, this Court granted a motion to stay in part, ordering that discovery continue but that the motions deadlines be extended until August

1, 2011. Plaintiffs oppose the issuance of a stay of all proceedings.

The Supreme Court's anticipated decision in *Demahy* and *Mensing* may have a significant impact on this litigation, either by bringing it to a close or providing guidance on the issues raised in the case. A stay is therefore appropriate on the filing of all *Daubert* and dispositive motions until thirty days after the Supreme Court has issued its decision. The deadline for the case to be trial ready is continued until further order of the Court. The parties' filings suggest discovery may have been completed. If not, completion of discovery will advance the litigation appropriately so that motions can be filed once the Supreme Court decision is issued. A stay regarding discovery is therefore **denied**.

The motion to stay (Doc. 134) is **granted in part and denied in part**. The filing of *Daubert* and dispositive motions is stayed until thirty days after issuance of the Supreme Court's decision, and shall be due on that date. If the Supreme Court has not rendered a decision during this term, the motions deadline is extended to August 1, 2011. The motion to stay regarding discovery matters is denied. The emergency motion to expedite (Doc. 145) and the emergency motion for hearing

regarding the emergency motion to expedite (Doc. 159) are denied as moot.

Dated at Burlington, Vermont this 15<sup>th</sup> day of February, 2011.

/s/ William K. Sessions III  
William K. Sessions III  
District Court Judge